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FM AMEMBASSY MANILA
TO RUEHC/SECSTATE WASHDC IMMEDIATE 4504
INFO RUEHNH/AMCONSUL NAHA IMMEDIATE 0078
RUEKJCS/SECDEF WASHDC IMMEDIATE
RHEHNSC/NSC WASHDC IMMEDIATE
RUEKJCS/JOINT STAFF WASHINGTON DC IMMEDIATE
RHHMUNA/CDRUSPACOM HONOLULU HI IMMEDIATE

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STATE FOR EAP, PM, AND EAP/MTS
USPACOM ALSO FOR FPA HUSO AND J5
SECDEF/OSD/ISA/AP (TOOLAN/BAILEY)
JOINT STAFF/J5 (WILKES/ROBINSON)

E.O. 12958: N/A

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SUBJECT: MARINE CASE: NEW MOTION TO SUPREME COURT AND
CALLS FOR VFA REVIEW

REF: MANILA 38 AND PREVIOUS

¶1. (U) The private prosecutor in the case of Lance Corporal Daniel J. Smith (refs) on January 8 filed a petition with the Philippine Supreme Court requesting that it "nullify" the Philippine government's December 29 transfer of Smith to U.S. custody and declare Article V paragraph 6 of the Visiting Forces Agreement regarding custody as "unconstitutional." The petition, which also sought Smith's arrest and return to Philippine custody, argued that Philippine officials had committed grave abuse of discretion in entering into an agreement with the U.S. Embassy on the transfer.

¶2. (U) Approximately 60 anti-VFA protesters demonstrated near the Embassy on January 8. Police dispersed the demonstrators without incident.

¶3. (U) On January 7, Malacanang fired Visiting Forces Commission Executive Director Zosimo Paredes, after he publicly criticized the Administration's transfer of custody to the U.S. Embassy without a court order as "taking the law into their own hands." He also announced his intent to resign. Malacanang Executive Secretary Ermita defended the dismissal, stating that Paredes had taken a position "contrary" to what the courts had ruled to be legal.

¶4. (U) Administration statements increasingly make clear that calls to review the VFA should be deferred until after all appeals in the Smith case are resolved, which is not expected for some time. While Malacanang Press Secretary Bunye said in a January 6 press statement that the government had "resolved to review the VFA and would work with Congress to amend certain provisions," Bunye later clarified that the Philippine government was willing to reassess some provisions of the agreement at a time deemed "mutually appropriate." Executive Secretary Ermita separately stated that Malacanang would not insist on a complete review of the VFA, but perhaps would want to clarify the "extraordinary circumstances" provision -- which provides that in "extraordinary cases" the Philippine government may request custody of U.S. personnel. Ermita commented that any such discussion could wait until the Smith case is finally resolved. Presidential Legal Counsel Apostol confirmed on January 8 that the VFA may require review, but only after conclusion of the Smith case.

¶5. (U) Media coverage of the case has also softened, and a number of less emotional, more thoughtful editorials on the VFA have begun to appear. Some columnists are now focusing on the larger national interests served in honoring

international commitments and on the positive role played by U.S. forces under the VFA in strengthening Philippine national defense and in aiding disaster-affected communities.

One anti-VFA columnist even provided space in his column to his dissenters.

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